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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SERVICE AND EXECUTION OF PROCESS BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General,
the Honourable Michael Duffy MP)



SERVICE AND EXECUTION OF PROCESS BILL 1992

OUTLINE

This Bill replaces the Service and Execution of Process Act 1901 ('SEPA'), which is to be repealed by the Service and Execution of Process (Transitional Provisions and Consequential Amendments) Bill 1992.

2. SEPA, which provides for interstate service of court process, enforcement of court judgments and execution of warrants, needs to be reformed to take account of legal and technological developments.

3. The Bill is largely based on recommendations of the Law Reform Commission ('LRC') in its report Service and Execution of Process. It provides for interstate -

- . service of process of courts and of tribunals exercising adjudicative functions;
- . service of subpoenas issued by courts and of tribunals;
- . enforcement of civil judgments of courts and of tribunals exercising adjudicative functions; and
- . execution of warrants.

4. Part 7 (which relates to interstate enforcement of fines) is based on Part IVA of SEPA. Part IVA was not covered by the LRC report.

5. The Bill greatly simplifies the procedures now contained in SEPA, and also extends their application to tribunals exercising adjudicative functions.

FINANCIAL IMPACT

6. The Bill is expected to have no impact on Commonwealth expenditure or revenue.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1: Short title

7. This clause provides for the short title of the Act.

Clause 2: Commencement

8. Sections 1 and 2 are to commence on Royal Assent. The other provisions of the Act will commence on a day to be fixed by Proclamation or, if no Proclamation is made, on the first day after 4 months from Royal Assent.

Clause 3: Interpretation

9. This clause defines words and expressions used in the Act. The principal definitions are:

- . 'adjudicative function' is defined, in relation to a tribunal, as the function of determining a person's rights or liabilities, including the function of making a determination altering those rights or liabilities, or relating to any of the links set out in clause 48 between the subject matter of the proceedings and the State in which the tribunal is established.
- . 'criminal proceeding' is defined to include prosecutions for offences and alternative procedures whereby a liability or a penalty for an offence may be imposed (together with proceedings related to either of these). It does not include claims for compensation or proceedings under proceeds of crime legislation
- . 'judgment' is given an extensive meaning. It means money judgments in civil proceedings, non-money judgments in civil proceedings (except under

proceeds of crime legislation), orders of tribunals, orders in criminal proceedings requiring a person to do or not to do an act or for the payment of money as a debt to the Crown, orders for forfeiture of bail and judgments registered under the Foreign Judgments Act 1991. It is not relevant whether or not the judgment or order is final.

The definition does not include judgments of foreign courts registered in Australian courts otherwise than under the Foreign Judgments Act 1991, orders imposing fines or orders relating to the granting of probate, letters of administration or the administration of the estate of a deceased person.

. 'person under restraint' is defined to include a person on bail, conditionally released from prison or subject to a form of alternative sentencing or supervision.

. 'prison' includes any place of detention.

Clause 4: Copies

10. Several provisions allow a copy of a process, order or document to be served or produced. This clause defines a copy to mean a completely legible fax or photocopy that is identical with the original in all material respects. There is a presumption that a document that purports to be a copy of the original is such unless evidence is adduced that raises real doubt.

Clause 5: Territories regarded as States

11. This clause has the effect that references in the Act to States include the Territories (other than in clause 125 which deals with the Removal of Prisoners (Territories) Act 1923). Similarly, in this memorandum 'State' is used to include 'Territory'.

Clause 6: Act to bind Crown

12. This clause provides for the Crown in all its capacities to be bound by the Act.

Clause 7: Territories

13. This clause extends the Act to each external Territory.

Clause 8: Effect on the operation of other laws

14. This clause makes it clear that, subject to limited exceptions, the Act will override State law on interstate service and execution of process and judgments. This removes confusion and difficulties arising where there are alternative legal regimes available for serving documents interstate.

15. Decisions of courts or tribunals to allow substituted service of process are not affected by the Act.

16. The schemes established by the Transfer of Prisoners Act 1983 and uniform State and Territory legislation, and the Removal of Prisoners (Territories) Act 1923 and the Removal of Prisoners (Australian Capital Territory) Act 1968 of the Australian Capital Territory, providing for the interstate transfer of prisoners, are preserved.

17. The clause also preserves the operation of certain requirements of State and Territory law relating to the service of subpoenas additional to those set out in the Act.

Clause 9: Service on companies and registered bodies

18. This clause sets out the means of service of a process, order or document under the Act on a company or registered body. They are the same as those now provided by sections 220 and 363 of the Corporations Law. Service may be effected by leaving the process etc. at, or by sending it by post to, the registered office of the company or registered body, or by delivering a copy of the process etc. personally to each of 2 directors of the company or registered body resident in Australia or an external Territory.

19. Where a liquidator or official manager of a company, or liquidator of a registered body, has been appointed, service may be effected by leaving the process etc. at, or by posting it to, the last address of the office of the liquidator or official manager notice of which has been lodged under the Corporations Law.

20. Service of a process etc. on a registered body that is a registered foreign company may be effected by leaving it at, or by sending it by post to, the last address of a local agent of the company notice of which has been lodged under the Corporations Law. Service may also be effected on such a registered body by delivering a copy of the process etc. personally to each of 2 directors of the body resident in Australia or an external Territory.

21. This clause excludes the operation of sections 220 and 363 of the Corporations Law (which relate to service of documents) to service of documents which may be served under this Act.

Clause 10: Service on other bodies corporate

22. Service of a process, order or document under this Act may be effected on a body corporate that is not a company or a registered body -

- . by leaving the process etc. at, or sending it by post to, a particular place specified for service by State law; or
- . otherwise, by leaving the process etc. at, or by sending it by post to, the body corporate's principal office or place of business.

Clause 11: Proof of service

23. Under this clause, except where service is by post, service of a process, order or document under the Act is taken to have been proved, only if there are proved -

- . the identity of the person who served it;
- . the time at, day on, place at and way in which it was served; and
- . if the person served had to be identified, the way in which that person was identified (for this purpose, evidence of a statement made by the person served concerning his or her identity or office is admissible as evidence of that identity or office).

24. Service by post under the Act of a process, order or document is taken to have been proved only if the fact of posting the process etc. to the appropriate address as specified in the section and the day on which it was posted are proved.

25. Service may be proved by affidavit, or by means of proof available under the law of the State of issue with respect to intrastate service.

Clause 12: Effect of service

26. This clause provides that interstate service has the same effect as if the process had been served intrastate. For example, service of initiating process under the Act will enable a court of a State to proceed to judgment in the same way as if the process had been served within that State.

PART 2 - SERVICE OF PROCESS IN CIVIL AND CRIMINAL
PROCEEDINGS

Division 1 - Initiating process in civil proceedings

Clause 13: Application of Division

27. This clause limits the application of Part 2 Division 1 to civil proceedings in a court.

Clause 14: Meaning of appearance

28. This clause defines 'appearance' for the purposes of Part 2 Division 1. It means, in brief, a written notice given to the court of issue that the person served acknowledges service of the initiating process or intends to take part in the proceeding or to contest the court's jurisdiction. The notice must comply with the law of the place of issue unless the court accepts it despite any non-compliance.

Clause 15: Initiating process may be served in any part of Australia

29. This clause provides that initiating process issued in one State may be served in another State. Service must be effected on an individual in the same way as service of such a process in the place of issue, on a company or registered body in accordance with clause 9, and on any other body corporate in accordance with clause 10.

30. The effect of this clause is to confer jurisdiction on courts, by means of interstate service of initiating process, without any requirement of a nexus between the subject of the litigation and the State in which proceedings are brought. This clause, combined with clause 20 and cross-vesting legislation, enables proceedings to be determined in the most convenient or appropriate court.

Clause 16: Information to be provided

31. This clause requires that copies of any prescribed notices be attached to the process served. Failure to attach the notices will result in service being ineffective.

Clause 17: Time for appearance

32. This clause provides that a person served with initiating process under the Act, who is required or permitted to enter an appearance (under a law of the place of issue) is to have a period of 21 days after service within which to enter an appearance. The court is given a discretion to fix a shorter period.

Clause 18: Appearance to state address for service

33. Under this clause an appearance is effective only if it gives an address for service of documents. The address may be anywhere in Australia.

34. The court of issue must set aside the appearance if the address for service is false or misleading. The clause does not affect any other power of the court to set aside an appearance.

35. Where State law does not require the appearance to state an address for service, an address of the person entering the appearance stated in the appearance is taken to be the person's address for service.

Clause 19: Security for costs

36. This clause enables the court, on application by the person served with initiating process, to order that the party on whose behalf the process was served give security for costs, and to stay the proceeding until the security is given. Other powers of the court to make an order requiring security for costs are preserved.

Clause 20: Stay of proceedings

37. This clause provides that the person served may apply to the court of issue for an order staying the proceeding.

38. The court may order that the proceeding be stayed if it is satisfied that a court of another State with jurisdiction to determine all matters in issue between the parties is the appropriate court to determine those matters. A non-exhaustive list of matters the court is to take into account is set out in the clause.

39. This clause does not affect any power of the court to stay a proceeding on another ground or the operation of Commonwealth and State laws providing for cross-vesting of

jurisdiction. The clause does not apply to a proceeding begun in a Supreme Court, because such a proceeding can be transferred to a Supreme Court of another State under cross-vesting laws.

Clause 21: No restraint of proceedings

40. This clause prohibits, where an initiating process has been served under the Division, a court in a State other than the one in which the proceeding was brought from restraining a party from taking steps in the proceeding on the basis that the venue is inappropriate. A question of the appropriateness of the venue can be raised only in the courts of the State in which the proceeding is brought.

Division 2 - Initiating process in criminal proceedings

Clause 22: Application of Division

41. This clause provides that Part 2 Division 2 applies only to criminal proceedings.

Clause 23: Initiating process

42. This clause extends the meaning of 'initiating process' to include process which notifies a person that, in specified circumstances, further steps will not be taken in relation to the offence, or liability for the offence may be determined without a court appearance.

Clause 24: Initiating process may be served in any part of Australia

43. This clause provides that initiating process issued in one State may be served in another State. Service must be effected on an individual in the same way as service of such an initiating process in the place of issue, on a company or registered body in accordance with clause 9 and on any other body corporate in accordance with clause 10.

Clause 25: Time for service

44. This clause provides that where a person served with initiating process is required or permitted to do an act specified in the process by a particular day, service of the process is not effective unless the period between service and that day is not less than 21 days. A court or authority may allow a shorter period. A non-exhaustive list of matters to be taken into account is set out.

Division 3 - Other process

Clause 26: Application of Division

45. This clause provides that Part 2 Division 3 applies to both criminal proceedings and civil proceedings before a court or authority.

Clause 27: Other process may be served in any part of Australia

46. This clause provides that a process, other than an initiating process or a subpoena, issued in one State may be served in another State. Service must be effected on an individual in the same way as service of such process in the place of issue, on a company or registered body in accordance with clause 9 and on any other body corporate in accordance with clause 10.

PART 3 - SERVICE OF SUBPOENAS

Division 1 - Service of subpoenas generally

Clause 28: Application of Division

47. This clause provides that Part 3 Division 1 applies to a subpoena issued by a court or authority that is addressed to a person who is not in prison, or to a person in prison who is required only to provide documents or things.

Clause 29: Subpoenas may be served in any part of Australia

48. This clause enables a subpoena issued in one State to be served in another State. Service is to be effected in the same way as service of a subpoena in the State in which it was issued. Service is effective only if the subpoena contains an address for service of the person at whose request the subpoena was issued.

Clause 30: Time for service

49. This clause provides that service of a subpoena is effective only if the period between service and the day on which the person is required to comply with the subpoena is not less than 14 days, or such shorter period as the court or authority of issue allows.

50. The shorter period is only to be allowed if the evidence sought is necessary in the interests of justice and there will be enough time for the person to comply with the subpoena without hardship or serious inconvenience, or to make an application to set aside, or obtain other relief with respect to, the subpoena. In allowing a shorter period, the court or authority must impose a condition that the subpoena not be served after a specified day, and may impose other conditions.

Clause 31: Information to be provided

51. This clause provides that service of a subpoena is effective only if copies of any prescribed notices and, where relevant, a copy of the order reducing the period allowed for service, are attached to the subpoena.

Clause 32: Expenses

52. This clause provides that service of the subpoena is effective only if there is paid or tendered to the person served, not later than a reasonable time before the time for compliance with the subpoena, money (or money and vouchers by virtue of subclause 3(4)) sufficient to meet the person's reasonable expenses of complying with the subpoena.

53. It also preserves the special rules relating to witness's expenses that apply in criminal trials before the Supreme Court of Christmas Island held in a State or a Territory other than Christmas Island, or a court of the Cocos (Keeling) Islands held in a State or a Territory other than the Cocos (Keeling) Islands.

Clause 33: Application for relief from subpoena

54. This clause will apply where the person served has a right to apply for relief with respect to the subpoena under the law of the place of issue.

55. It sets out an expedited procedure for the hearing of an application for relief. The application, which must be supported by affidavit, may be lodged with the court or authority by fax.

56. If neither party to the application objects the court or authority can determine the application without a hearing. If there is a hearing, it can be conducted by video link or telephone.

57. A person entitled to practise as a legal practitioner in either the place of issue of the subpoena, or another State in which a person is participating in the hearing by video link or telephone, is to have a right of audience before the court or authority at the hearing.

Clause 34: Subpoenas not requiring attendance

58. This clause enables a person subpoenaed only to produce documents or things to comply with the subpoena by delivering them to the Registrar or Clerk of the court which issued the subpoena or, where the subpoena was issued by an authority, of the court of which that authority is a member or officer, not less than 24 hours before the date for compliance.

Clause 35: Adjustment of expenses

59. This clause requires the person at whose request the subpoena was issued to pay to the person served with the subpoena his or her reasonable expenses of complying with the subpoena and, if that person is a person under restraint his or her reasonable expenses of complying with section 36. The court or authority that issued the subpoena may make orders to ensure that the person served with the subpoena receives those expenses.

Clause 36: Persons under restraint

60. This clause provides that service of a subpoena under the Division on a person under restraint (as defined in clause 3) does not relieve the person from a restriction or obligation imposed on him or her because he or she is a person under restraint.

61. It also provides that no action is to be taken against a person under restraint for failure to comply with a subpoena served under the Division if -

- . by complying with it he or she might breach a restriction or be unable to comply with an obligation imposed on the person by or under the order or restriction to which he or she is subject (for example, a bail condition not to leave the State, or a condition to report to police at frequent intervals);
- . as soon as practicable after being served with the subpoena, he or she informs:
 - the appropriate authority supervising compliance with the order or restriction of service of the subpoena; and
 - the person at whose request the subpoena was issued, and the court or authority of issue, of the obligation imposed on the person by that order or restriction;

- . except where State law does not permit the restriction or obligation to be varied, he or she has taken such steps as are, in all the circumstances, reasonable to have the restriction or obligation varied (for example, by making an application for variation of bail);
- . he or she does not succeed in having the restriction or obligation varied in time reasonably to permit compliance with the subpoena; and
- . he or she has informed the person at whose request the subpoena was issued, and the court or authority of issue, of the steps he or she took in an unsuccessful attempt to have the restriction or obligation varied or that State law does not permit such a variation.

Clause 37: Issue of warrants for non-compliance with subpoenas

62. This clause provides that except as mentioned below a court or authority, which or who could issue a warrant for non-compliance with a subpoena served intrastate, may issue a similar warrant for non-compliance with a subpoena served under Part 3 Division 1.

63. However, where the person who failed to comply with a subpoena is a person under restraint who complied with section 36, such a court or authority may only issue a warrant to apprehend the person to bring him or her before a court, authority or person to give evidence or produce a document or thing.

Division 2 - Service of subpoenas addressed to persons
in prison

Clause 38: Application of Division

64. This clause provides that Part 3 Division 2 applies to a

subpoena, addressed to a person in prison in another State, except where the subpoena only requires production of documents or things.

Clause 39: Order for production

65. This clause provides that the court or authority which issued a subpoena may, on application, order the custodian of a prisoner (that is, the person in charge of the place where the prisoner is detained) to produce the prisoner at the time and place specified for compliance with the subpoena.

66. An order may be made only where the evidence sought is necessary in the interests of justice and there will be enough time for the order to be complied with, or for an application to be made to set aside or vary the order, or set aside or obtain other relief with respect to the subpoena.

67. The court or authority may require the applicant to give security for the reasonable expenses of complying with the order and may stay the hearing of the application for the order until security is given.

Clause 40: Service of order for production

68. This clause provides for service of copies of the order for production and the subpoena on the custodian and the prisoner. Service of the order and subpoena is to be effected in the same way as service of a subpoena in the State in which the subpoena was issued. Service is effective only if the subpoena contains an address for service of the person at whose request the subpoena was issued.

69. The custodian or each custodian, if more than one, must comply with the order unless the prisoner ceases to be in prison before the time for compliance. A prisoner who is released from prison in sufficient time before the time for compliance with the subpoena to be able reasonably to comply with the subpoena must comply with it provided he or she has received the allowances properly payable for his or her

expenses and provided he or she need not comply by reason of being a person under restraint. For the purposes of clause 36, which sets out the obligations of a person under restraint, a prisoner who becomes a person under restraint on release from prison is deemed to have been served with the subpoena at the time of release.

Clause 41: Information to be provided

70. This clause provides that service of the subpoena is effective only if copies of any prescribed notices are attached to the subpoena.

Clause 42: Expenses

71. This clause provides that service of the order for production is effective only if there is paid or tendered to the custodian the money (or money and vouchers by virtue of subclause 3(4)) for the expenses the prisoner would incur in complying with the subpoena if he or she were not a prisoner. If the prisoner is released from prison before the time for compliance with the order for production the custodian must pay or tender the money and vouchers received to the prisoner. If they are not paid or tendered within a reasonable time, the prisoner is not required to comply with the subpoena.

Clause 43: Application for relief from subpoena

72. This clause will apply where the prisoner has a right to apply for relief with respect to the subpoena under the law of the place of issue.

73. It provides the same expedited procedure for hearing the application as is provided by clause 33.

74. If the court or authority sets aside or grants other relief in respect of the subpoena, it is to make any necessary consequential order in respect of the order for production.

Clause 44: Application for relief from order for production

75. This clause enables the custodian or the prisoner to apply to have the order for production set aside or varied.

76. In deciding whether or not to set aside or vary the order the court or authority must take into account public safety and the health and safety of the prisoner. The prisoner may apply only on the ground that compliance with the order would adversely affect his or her health or safety.

77. The clause provides a similar expedited procedure for hearing the application to that provided by clause 33.

78. If the court or authority sets aside or varies the order, it is to make any necessary consequential order in respect of the subpoena.

Clause 45: Adjustment of expenses

79. This clause provides for a person who has incurred expenses as a result of compliance (by that person or another person) with an order for production to be paid his or her reasonable expenses.

80. The expenses are to be paid by the person at whose request the subpoena was issued.

Clause 46: Custody of prisoner etc.

81. This clause provides that the custodian, and any escort of the prisoner, have -

- . custody of the prisoner;
- . the same powers of detention and disposition of the prisoner while outside the State of imprisonment as the custodian has within that State; and

- . the necessary powers to ensure compliance with the order for production and subsequent return of the prisoner to the prison in which he or she is serving his or her term of imprisonment.

82. The custodian or escort may require the person in charge of a prison in a State to take the prisoner into custody and return him or her to the custodian or escort.

83. Under the clause, the law of the State in which the person is in prison relating to the liability of a person who escapes from lawful custody applies to a prisoner (other than a Commonwealth prisoner) while outside the State for the purpose of compliance with the order for production. Escape of a Commonwealth prisoner is governed by Commonwealth law.

84. While a prisoner is outside the State in which he or she is serving a sentence in prison, he or she is deemed to be serving that sentence while in the custody of, or custody arranged by, the custodian or escort.

PART 4 - SERVICE OF PROCESS OF TRIBUNALS

Division 1 - Preliminary

Clause 47: Interpretation

85. This clause defines terms for the purposes of Part 4.

Division 2 - Service of initiating and other process related to adjudicative functions

Clause 48: Application of Division

86. This clause confines the operation of Part 4 Division 2 to proceedings in a tribunal connected with the performance of an adjudicative function where there is one or more of the links listed in the clause between the subject-matter of the proceeding and the State in which the tribunal is

established. They include proceedings determining legal entitlements or rights, and disciplinary proceedings.

Clause 49: Meaning of appearance

87. This clause defines 'appearance' for the purposes of Part 4 Division 2. It means, in brief, a written notice given to the tribunal of issue that the person served acknowledges service of the initiating process or intends to take part in the proceeding or contest the tribunal's jurisdiction. The notice must comply with the law of the place of issue unless the tribunal accepts it despite any non-compliance.

Clause 50: Initiating process may be served in any part of Australia

88. This clause provides that initiating process issued in one State may be served in another State. Service must be effected on an individual in the same way as service of such an initiating process in the place of issue, on a company or registered body in accordance with clause 9 and on any other body corporate in accordance with clause 10.

Clause 51: Information to be provided

89. This clause requires that copies of any prescribed notices be attached to the process served. Failure to attach the notices will result in service being ineffective.

Clause 52: Time for appearance

90. This clause provides that a person served with initiating process under the Act, who is required or permitted to enter an appearance (under a law of the place of issue), is to have a period of 21 days after service within which to enter an appearance. Where there is no procedure for entering an appearance, no step may be taken in the proceeding for a period of 21 days after service. In each case, the tribunal of issue is given a discretion to fix a shorter period.

Clause 53: Appearance to state address for service

91. Under this clause an appearance is effective only if it gives an address for service of documents. The address may be anywhere in Australia.

92. The tribunal must set aside the appearance if the address is false or misleading. The clause does not affect any other power of the tribunal to set aside an appearance.

93. If State law does not require the appearance to state an address for service, an address of the person entering the appearance stated in the appearance is taken to be the person's address for service.

Clause 54: Security for costs

94. This clause enables the tribunal, where it has power to make an order for costs, on application by the person served with initiating process, to order that the party on whose behalf the process was served give security for costs, and to stay the proceeding until the security is given.

95. The amount of security ordered must not exceed the maximum amount (if any) of costs which the tribunal could order. Other powers of the tribunal to make an order requiring security for costs are preserved.

Clause 55: Other process may be served in any part of Australia

96. This clause provides that a process, other than an initiating process or a subpoena, issued in one State may be served in another State. Service must be effected on an individual in the same way as service of such process in the place of issue, on a company or registered body in accordance with clause 9 and on any other body corporate in accordance with clause 10.

Division 3 - Service of subpoenas in the performance of
adjudicative functions

Subdivision A - Service of subpoenas generally

Clause 56: Application of Subdivision

97. This clause provides that Part 4 Division 3 Subdivision A applies to a subpoena, issued by a tribunal in connection with its performance of an adjudicative function, that is addressed to a person who is not in prison, or to a person in prison who is required by the subpoena only to provide documents or things.

Clause 57: Order for leave

98. This clause enables leave to be given for service of the subpoena outside the State in which it was issued.

99. Leave may be given by a judge or a magistrate who constitutes the tribunal or is a member of it. Alternatively, leave may be given by a court, or by a judge or magistrate, depending upon whether or not the subject matter of the proceeding has a monetary value or is a claim for money.

100. Leave may only be given where the evidence sought is necessary in the interests of justice and there will be enough time either to comply with the subpoena without hardship or serious inconvenience or to make an application to set aside, or obtain other relief with respect to, the subpoena. In granting leave, the court, judge or magistrate must impose a condition that the subpoena not be served after a specified day, and may impose other conditions.

Clause 58: Subpoenas may be served in any part of Australia

101. This clause enables a subpoena issued in one State to be served in another State where leave has been granted. Service

is to be effected in the same way as service of a subpoena in the State in which it was issued. Service is effective only if the subpoena contains an address for service of the person at whose request the subpoena was issued.

Clause 59: Information to be provided

102. This clause provides that service of the subpoena is effective only if copies of any prescribed notices and of the order giving leave are attached to the subpoena.

Clause 60: Expenses

103. This clause provides that service of the subpoena is effective only if there is paid or tendered to the person served, not later than a reasonable time before the time for compliance with the subpoena, money (or money and vouchers by virtue of subclause 3(4)) sufficient to meet the person's reasonable expenses of complying with the subpoena.

Clause 61: Application for relief from subpoena

104. This clause applies where the person served has a right, under the law of the place of issue, to apply to the tribunal or to a court for relief with respect to the subpoena.

105. This clause provides a similar expedited procedure for hearing the application to that provided by clause 33.

Clause 62: Subpoenas not requiring attendance

106. This clause enables a person subpoenaed only to produce documents or things to comply with the subpoena by delivering them to the secretary of the tribunal not less than 24 hours before the date for compliance.

Clause 63: Adjustment of expenses

107. This clause provides for the person served with the subpoena to be paid his or her reasonable expenses of

complying with the subpoena and, if that person is a person under restraint, his or her reasonable expenses of complying with section 64.

108. The expenses are to be paid by the person who is required to do so under a law of the place of issue of the subpoena, or by order of the tribunal. If there is no such person, the expenses are to be paid by the party at whose request the subpoena was issued, or if the subpoena was issued by the tribunal of its own motion, by the State in which the subpoena was issued.

109. The amount payable for expenses other than the expenses of complying with section 64 is the amount fixed by State law, or determined by the tribunal or, otherwise, the amount the witness would be entitled to if subpoenaed to give evidence in the Supreme Court of that State.

Clause 64: Persons under restraint

110. This clause sets out the obligations of a person under restraint when served interstate with a subpoena issued by a tribunal in the performance of an adjudicative function. It is the same as clause 36 (which relates to subpoenas issued by courts or authorities).

Clause 65: Issue of warrants for non-compliance with subpoenas

111. This clause provides that except as mentioned below a tribunal or magistrate, which or who could issue a warrant for non-compliance with a subpoena served intrastate, may issue a similar warrant for non-compliance with a subpoena served under Part 4 Division 3 Subdivision A.

112. However, where the person who failed to comply with a subpoena served under Part 4 Division 3 Subdivision A is a person under restraint who complied with section 64, such a tribunal or magistrate may only issue a warrant to apprehend the person to bring him or her before the tribunal to give evidence or produce a document or thing.

Subdivision B - Service of subpoenas addressed to persons
in prison

Clause 66: Application of Subdivision

113. This clause provides that Part 4 Division 3 Subdivision B applies to a subpoena, issued by a tribunal in connection with its performance of an adjudicative function, addressed to a person in prison in another State, except where the subpoena only requires production of documents or things.

Clause 67: Order for production

114. This clause provides that a court, judge or magistrate which or who may grant leave to serve a tribunal subpoena interstate may order the custodian of a prisoner (that is, the person in charge of the place where the prisoner is detained) to produce the prisoner at the time and place specified for compliance with the subpoena.

115. An order may only be made where the evidence sought is necessary in the interests of justice and there will be enough time for the order to be complied with, or for an application to be made to set aside or vary the order, or to set aside or obtain other relief with respect to the subpoena.

116. The court, judge or magistrate may require the applicant to give security for the reasonable expenses of complying with the order and may stay the hearing of the application until security is given.

Clause 68: Service of order for production

117. This clause provides for service of copies of the order for production and the subpoena on the custodian and the prisoner. Service of the order and subpoena is to be effected in the same way as service of a subpoena in the State in which the subpoena was issued. Service is effective only if the subpoena contains an address for service of the person at whose request the subpoena was issued.

118. The custodian or each custodian, if more than one, must comply with the order unless the prisoner ceases to be in prison before the time for compliance. A prisoner who is released from prison in sufficient time before the time for compliance with the subpoena to be able reasonably to comply with the subpoena must comply with it provided he or she has received the allowances properly payable for his or her expenses and provided he or she need not comply by reason of being a person under restraint. For the purposes of clause 64, which sets out the obligations of a person under restraint, a prisoner who becomes a person under restraint on release from prison is deemed to have been served with the subpoena at the time of release.

Clause 69: Information to be provided

119. This clause provides that service of the subpoena is effective only if copies of any prescribed notices are attached to the subpoena.

Clause 70: Expenses

120. This clause provides that service of the order for production is effective only if there is paid or tendered to the custodian the money (or money and vouchers by virtue of subclause 3(4)) for the expenses the prisoner would incur in complying with the subpoena if he or she were not a prisoner. If the prisoner is released from prison before the time for compliance with the order for production the custodian must pay or tender the money and vouchers received to the prisoner. If they are not paid or tendered within a reasonable time, the prisoner is not required to comply with the subpoena.

Clause 71: Application for relief from subpoena

121. This clause will apply where the prisoner has a right, under the law of the place of issue, to apply to the tribunal or to a court for relief with respect to the subpoena.

122. This clause provides a similar expedited procedure for hearing the application to that provided by clause 33.

123. If the court or tribunal sets aside or grants other relief in respect of the subpoena, it is to make any necessary consequential order in respect of the order for production.

Clause 72: Application for relief from order for production

124. This clause enables the custodian or the prisoner to apply to a court, judge or magistrate which or who could have made the order for production to have the order set aside or varied.

125. In deciding whether or not to set aside or vary the order the court must take into account public safety and the health and safety of the prisoner. The prisoner may apply only on the ground that compliance with the order would adversely affect his or her health or safety.

126. This clause provides a similar expedited procedure for hearing the application to that provided by clause 33.

127. If the court, judge or magistrate sets aside or varies the order, it is to make any necessary consequential order in respect of the subpoena.

Clause 73: Adjustment of expenses

128. This clause provides for the person who has incurred expenses as a result of compliance with an order for production (by that person or another person) to be paid his or her reasonable expenses.

129. The expenses are to be paid by the person which or who is ordered to do so by the court, judge or magistrate which or who made the order for production or, if no such order is made, by the party at whose request the subpoena was issued or, if the subpoena was issued by the tribunal of its own motion, by the State in which the subpoena was issued.

Clause 74: Custody of prisoner etc.

130. This clause sets out the powers of the custodian, and any escort of the prisoner, and the law applicable to a person taken in custody under an order for production. It is identical to clause 46.

Division 4 - Service of subpoenas in the performance of
investigative functions

Subdivision A - Service of subpoenas generally

Clause 75: Application of Subdivision

131. This clause provides that Part 4 Division 4 Subdivision A applies to a subpoena, issued by a tribunal in connection with its performance of an investigative function, that is addressed to a person who is not in prison, or to a person in prison who is required by the subpoena only to provide documents or things.

Clause 76: Order for leave

132. This clause enables a State Supreme Court to give leave for the subpoena to be served outside the State in which it was issued.

133. Leave may only be given if the court is satisfied that the evidence sought is relevant and, except in relation to expert evidence, cannot reasonably be obtained from a person within the State. The court must be satisfied, where the evidence may relate to matters of state, that it is in the public interest that the evidence be given or the document or thing be produced. In granting leave the court must impose a condition that the subpoena not be served after a specified day, and may impose other conditions.

Clause 77: Application of other provisions

134. This clause applies to subpoenas issued by tribunals in the performance of an investigative function the same provisions as apply to subpoenas issued by tribunals in the exercise of an adjudicative function, except that -

- . a person's reasonable expenses of complying with a subpoena are to be paid by the State in which the subpoena was issued; and
- . an application for relief with respect to a subpoena must be made to the Supreme Court of the State in which the subpoena was issued.

Subdivision B - Service of subpoenas addressed to persons
in prison

Clause 78: Application of Subdivision

135. This clause provides that Part 4 Division 4 Subdivision B applies to a subpoena, issued by a tribunal in connection with its performance of an investigative function, addressed to a person who is in prison in another State except where the subpoena only requires production of documents or things.

Clause 79: Order for production

136. This clause enables the Supreme Court of the State of issue of the subpoena to order the custodian of a prisoner (that is, the person in charge of the place where the prisoner is detained) to produce the prisoner at the time and place specified for compliance with the subpoena.

137. The court may only make the order if it is satisfied that the evidence sought is relevant and, except in relation to expert evidence, cannot reasonably be obtained from a person within the State. The court must be satisfied, when the evidence may relate to matters of state, that it is in the

public interest that the evidence be given or the document or thing be produced.

Clause 80: Application of other provisions

138. This clause applies to subpoenas issued by tribunals in the performance of an investigative function, and orders for production based on such subpoenas, the same provisions as apply to subpoenas issued by tribunals in the exercise of an adjudicative function and to related orders for production, except that -

- . reasonable expenses incurred as a result of compliance with an order or a subpoena are to be paid by the State in which the subpoena was issued; and
- . applications for relief with respect to subpoenas and orders for production must be made to the Supreme Court.

PART 5 - EXECUTION OF WARRANTS

Division 1 - General

Clause 81: Application of Division

139. This clause provides that Part 5 Division 1 applies to all warrants other than those issued by tribunals and those issued under Part 7 (which relates to interstate enforcement of fines).

Clause 82: Persons subject to warrants may be apprehended

140. This clause provides that a person named in a warrant may be apprehended in another State. The warrant need not be produced when the person is apprehended. However, the warrant or a copy of it must be produced when a person released under subclauses 83(3), (4) or (7) is re-apprehended under the same warrant.

Clause 83: Procedure after apprehension

141. This clause provides that the person apprehended must be taken before a magistrate in the State where the person was apprehended as soon as practicable after apprehension.

142. The warrant or a copy of it must be produced to the magistrate. If one is not available the magistrate must either order that person be released or adjourn the proceeding for a reasonable time and remand the person on bail or in custody. One further adjournment may be granted if reasonable cause is shown. The total time of the adjournments must not exceed 5 days. If the warrant or a copy is still not produced the person must be released.

143. The proceeding can be resumed before the end of a period of adjournment if the warrant or a copy becomes available.

144. When the warrant or a copy is produced, unless the warrant is invalid, the magistrate must remand the person on bail to appear in the place of issue of the warrant or order that the person be taken in custody to that place. The effect of an order that the person be taken in custody may be suspended.

Clause 84: Additional provisions relating to persons under restraint

145. This clause deals with the situation where a person under restraint is brought before a magistrate under clause 83. It is intended to provide a mechanism by which the interests of the State in which the person is under restraint are protected. Under the clause it will be an offence, punishable by fine, for the person not to inform the magistrate that he or she is a person under restraint.

146. Where the person is not on bail, the magistrate must adjourn the proceeding for a reasonable time (not exceeding 7 days), remand the person on bail and arrange for the clerk or

other officer of the court of which the magistrate is a member to give notice, as soon as practicable after the adjournment, by telephone or fax of the person's apprehension to the person in charge of the State's correction service. Where the person under restraint is on bail the magistrate may similarly adjourn the proceedings, on application by the person under restraint, a member of the Australian Federal Police, or a police officer of the State in which the person is under restraint.

147. On resumption of proceedings submissions may be made to the magistrate. Where the person is on bail, a member of the Australian Federal Police or a police officer of the State in which the person is on bail, and where the person is not on bail, the person in charge of the correction service and a person who supervises compliance with his or her obligations by the person under restraint, may make submissions.

148. Where a person under restraint is remanded on bail by the magistrate under paragraph 83(8)(a), it is a condition of that bail that he or she must return to the State in which he or she is under restraint as soon as practicable. Where the person is taken in custody under paragraph 83(8)(b), a magistrate may make orders relating to his or her return in custody to the State.

Clause 85: Procedure on remand on bail

149. This clause provides for the making of an instrument setting out the conditions to which the grant of bail is subject, and for bail to be revoked and the person bailed to be taken into custody if he or she refuses to sign the instrument or fails to comply with a condition of bail.

Clause 86: Review

150. This clause enables either the apprehended person or a person to whom the warrant was directed to apply to the Supreme Court of the State in which an order has been made by a magistrate under clause 83 for a review of the order. The

review is to be by way of rehearing. The Supreme Court is not to be bound by the rules of evidence in conducting a review.

Clause 87: Expenses

151. This clause provides for the payment of the reasonable expenses, analogous to those payable to a person who complies with a subpoena or incurs expenses in complying with an order for production. It applies where a person under restraint (for example a person on bail) goes interstate after being apprehended under a warrant issued for the purpose of having the person attend to give evidence if either the person is under restraint and has complied with his or her obligation under (e.g. to seek permission to comply with the subpoena) or the warrant was issued without a subpoena being served on the person.

Clause 88: Law applicable to grant etc. of bail

152. This clause provides that the law of a State with respect to the granting of bail applies in relation to the exercise of powers to grant bail to a person apprehended in that State, or who has applied for release from custody in that State, as if the person had been apprehended by authority of a law of that State.

153. It also provides that the law of a State with respect to bail and related matters applies in relation to a person remanded on bail in that State under Part 5 Division 1 as if the person had been remanded on bail to appear before a court of that State.

154. Money received in proceedings for the enforcement of bail is to be retained by the State where the bail condition which was breached was imposed.

Clause 89: Custody of persons etc.

155. This clause enables a person who has the custody of a person ('the apprehended person') under a court order to

require a person in charge of a prison to receive and keep the apprehended person in custody, and to surrender custody of that person as required.

156. Where the apprehended person is a person under restraint who is serving a period of home detention or a term of imprisonment by way of periodic detention, he or she is taken to be serving that period or term during any period he or she is in custody after being apprehended.

157. The clause also provides that the law of the place of issue of the warrant relating to liability for escape from lawful custody applies to a person being taken to that State under a court order.

Clause 90: Release of persons unnecessarily detained

158. This clause applies to a person who has been taken to the place of issue of a warrant in order to give evidence or to produce a document or thing. If the court or authority which issued the warrant is satisfied that it is not necessary to hold the person in custody to secure his or her attendance to give evidence or to produce the document or thing required, it may order that the person be released from custody, and may remand the person on bail.

Division 2 - Execution of warrants issued by tribunals

Clause 91: Application of Division

159. This clause provides that Part 5 Division 2 applies in relation to warrants issued by tribunals, whether in connection with the performance of adjudicative or investigative functions.

Clause 92: Application of Division 1 to certain warrants issued by tribunals

160. This clause provides that subject to Part 5 Division 2 Part 5 Division 1 (except clause 81 which sets out the

(primary) scope of application of Division 1 and subclauses 87(4) and (5), which provide for the making of orders for the recovery of expenses) also applies to certain warrants issued by tribunals. The warrants covered are those issued because of non-compliance with a subpoena for which leave to serve interstate had been given and warrants in respect of which the Supreme Court of the place of issue makes an order under clause 93.

161. Where the warrant was issued because of non-compliance with a subpoena, a copy of the instrument by which leave to serve the subpoena interstate was given, along with the warrant or copy warrant, must be produced -

- . when a person is re-apprehended under subclause 82(5); and
- . to the magistrate before whom the person is brought after apprehension under clause 83.

Clause 93: Orders for the execution of warrants

162. This clause authorises the Supreme Court of the place of issue of a warrant to make an order authorising the person's apprehension. This power is not available where the warrant was issued for non-compliance with a subpoena for which leave to serve interstate was given. Such warrants may be enforced interstate, without an order of a court, under clause 92 and Part 5 Division 1.

163. Where the warrant was issued to bring the person before a tribunal in the performance of an adjudicative function, the court may only make an order if the evidence sought is necessary in the interests of justice. Where the warrant was issued to bring the person before a tribunal in the performance of an investigative function, the court may only make an order if the evidence sought is relevant, cannot reasonably be obtained from a person in the place of issue of the warrant (except in the case of expert evidence) and, when the evidence may relate to matters of state, it is in the

public interest that the evidence be given or the document or thing be produced.

164. A copy of an order made under this clause must be produced to the magistrate before whom the person is brought after apprehension, along with the warrant or copy of the warrant.

Clause 94: Additional provisions relating to warrants issued in the performance of investigative functions

165. This clause provides who is to be the respondent where a person applies for an order to be released from custody (under clause 90) when taken interstate under a warrant issued by a tribunal with respect to its performance of an investigative function. The respondent is to be the tribunal where it is a body corporate or is constituted by an individual or, in any other case, the members of the tribunal.

Division 3 - Suppression orders

166. This Division confers on magistrates conducting return proceedings and on Supreme Courts conducting reviews of magistrates' orders the power to restrict reporting of proceedings or findings.

Clause 95: Interpretation

167. This clause defines a number of expressions for the purposes of Part 5 Division 3. The principal definitions are -

- . 'magistrate' means a person who, alone or with another person, may exercise the powers of a court of summary jurisdiction.
- . 'protected person' means a person whose jury trial might be prejudiced by the publication of a report of proceedings or findings made in a return hearing or a review.

- . 'suppression order' means an order prohibiting publication of a report of any part of the proceeding or review, or of a finding made by the magistrate or the Court.

Clause 96: Suppression orders

168. This clause applies where a magistrate is conducting a proceeding under clause 83 with respect to a person apprehended and brought before him or her under a warrant and where a Supreme Court is reviewing a magistrate's order under clause 86.

169. The magistrate or Court may order that a report of part of the proceeding or review held in public or a finding publicly made is not to be published. An order can only be made where the magistrate or Court is satisfied that publication would give rise to a substantial risk of prejudice to the fair trial of a person, of death, injury or property loss to a witness in a proceeding (or to a member of the witness's family), of prejudice to law enforcement or national security or that it would identify a victim of a sexual offence.

170. The power under this clause to make a suppression order is exclusive: no other power of the magistrate or Court to make such an order may be exercised for the purpose of preventing or lessening a risk mentioned in the clause.

Clause 97: Duration etc. of suppression orders

171. This clause provides that a suppression order made because of risk of prejudice to the fair trial of a person remains in force until revoked, the prosecution is terminated or the trial concluded.

172. A suppression order made on any other ground remains in force until revoked.

173. A suppression order must state the locality in which it

is to be enforceable (e.g. one, some or all States), and it may be made subject to specified conditions.

Clause 98: Interim suppression orders

174. This clause enables the magistrate or Court to make an interim suppression order without inquiring into the merits of the matter. An interim order will have effect, unless earlier revoked, until the application for a suppression order is determined.

Clause 99: Variation and revocation of suppression orders

175. This clause provides for variation or revocation of a suppression order - by a magistrate where the order was made by a magistrate, and by the Supreme Court where the suppression order was made by that Court. An order may also be varied or revoked by the magistrate or court hearing committal proceedings against the protected person or trying him or her.

176. The suppression order must be revoked if the ground or grounds on which it was made no longer exist, except that it may be continued if, at that time, there are other grounds on which such an order might be made even if those grounds did not exist when the order was made.

Clause 100: Applications for suppression orders etc.

177. This clause lists the persons who may apply for a suppression order, or for variation or revocation of a suppression order. Any such person may, without being joined as a party, make a submission to the magistrate or court, and adduce evidence in support of the submission, on the question whether a suppression order should be made, varied or revoked. A proceeding or review may be delayed by the magistrate or court to allow such a submission to be made or to permit evidence to be given.

Clause 101: Appeals against suppression orders

178. This clause provides for appeals as of right against the decision of a magistrate or court to make or not to make, to confirm, vary, revoke or continue, or not to vary or revoke, a suppression order. The clause is subject to the Judiciary Act 1903, under which appeals to the High Court are by special leave.

179. Where the decision was made by a magistrate, the appeal is to be made to a Supreme Court.

Clause 102: Institution of appeals

180. This clause lists the persons who may bring an appeal. They include the applicant for the order, the apprehended person, a person to whom the warrant was directed, publishing organisations and other persons who made a submission to the court or magistrate that made the decision under appeal and, subject to certain conditions, persons who could have applied for an order or made a submission but did not do so.

Clause 103: Disobedience of suppression orders

181. This clause provides that it is an offence punishable by 12 months imprisonment to fail or refuse to comply with a suppression order.

182. It is a defence to a prosecution if the defendant proves that he or she did not know of the suppression order and had made all reasonable inquiries in the circumstances about its existence. This defence is not available to a publishing organisation, or an employee or agent of the organisation, which or who did not inquire of the magistrate or Court in which the relevant proceedings were heard about whether a suppression order had been made.

PART 6 - JUDGMENTS

183. This Part provides for the interstate enforcement of judgments of State courts and orders of State tribunals.

Clause 104: Interpretation

184. This clause defines expressions used in Part 6. The principal definitions are -

- . 'court of rendition' means, in relation to a court judgment, the court in which the judgment was given. Where the judgment is an order of a tribunal, it means the tribunal (if the order is enforceable under State law without being registered or filed in a court) or the court in which the order is registered or filed.
- . 'proceeding' is given an expansive definition to include a proceeding in a tribunal connected with its performance of an adjudicative function.

Clause 105: Enforcement of judgments

185. This clause sets out the procedure by which a judgment given in one State can be enforced in another.

186. A judgment may be registered in a court of another State by lodging a sealed copy of the judgment (or a fax of such a sealed copy).

187. The court in which a judgment may be registered is the Supreme Court, where the court of rendition was a Supreme Court. In other cases, it is the court of most limited jurisdiction which could have given the relief given by the judgment or, if there is no such court, the Supreme Court.

188. On registration the judgment is to have the same force and effect and, except in relation to the stay of proceedings to enforce the judgment (clause 106) and interest (clause 108), is to be enforceable as if it had been given by the court in which it is registered.

189. However, a judgment can be enforced by a court in which it is registered only if, and to the extent that, it is

capable of being enforced by the court of rendition or a court in the place of rendition.

Clause 106: Stay may be granted

190. This clause provides that a court in which a judgment has been registered may stay enforcement of the judgment in that court. The court is given this power to enable the judgment debtor to make (and expeditiously prosecute) an appeal, or an application to set aside or vary the judgment, for time to pay or to pay by instalments. The court's order granting a stay must be subject to conditions to that effect. The court has a discretion to impose other conditions on the order granting a stay.

Clause 107: Costs

191. Under this clause reasonable costs and expenses of obtaining and lodging the copy judgment, and costs and expenses reasonably incurred in attempting to execute the judgment in the court of rendition or in another State, are recoverable in proceedings for enforcement of the registered judgment.

192. The entitlement to, and liability for, costs or expenses are the same as for enforcement of a similar judgment given by the court in which the judgment is registered.

Clause 108: Interest

193. This clause provides that interest on a registered judgment is to be assessed on the same basis as in the court of rendition.

Clause 109: Rules of private international law not to apply

194. This clause states that the rules of private international law about recognition and enforcement of foreign judgments can not prevent enforcement of a judgment under the Act.

PART 7 - ENFORCEMENT OF FINES IMPOSED BY COURTS
OF SUMMARY JURISDICTION

Clause 110: Interpretation

195. This clause defines words and expressions used in Part 7. The principal definitions are:

- . 'court' means a court of a State having summary jurisdiction to try offences under State law;
- . 'fine' means a pecuniary penalty imposed by a court for an offence against a Commonwealth law (other than a revenue law) or a State law, together with any other amount the person on whom the fine was imposed was ordered to pay in the proceedings in which the fine was imposed;
- . 'revenue law' means a Commonwealth law relating to taxation that contains special provisions with respect to imprisonment for non-payment of penalties.

Clause 111: Constitution of courts

196. This clause provides that a court, when exercising jurisdiction under Part 7, may be constituted by any person (other than a single justice of the peace) or persons competent to exercise the jurisdiction of the court in any other matter.

Clause 112: Issue of warrants of apprehension

197. This clause enables the clerk of a State court which imposed a fine on a person, or a justice of the peace for that State, to issue a warrant for the apprehension of that person ('a warrant of apprehension') where -

- . he or she has reason to believe the person is in another State;

- . the liability to pay the fine has not been fully discharged; and
- . because of non-payment of the fine, a warrant for the person's commitment to prison is current, or could be issued without a further court order.

198. If the person's liability to pay the fine is fully discharged before the warrant of apprehension is executed, the clerk of the court which imposed the fine may take action necessary to withdraw the warrant.

Clause 113: Execution of warrant of apprehension

199. This clause provides that the person named in the warrant of apprehension may be apprehended in a State other than the State in which the warrant was issued, by a police officer of the first-mentioned State.

200. Before apprehending the person, the police officer must give him or her an opportunity to pay without delay the whole of the unpaid amount of the fine. If he or she pays the person is not to be apprehended. The amount received and all copies of the warrant must be sent to the clerk of the court which imposed the fine.

201. If the person does not pay the whole of the unpaid amount of the fine, he or she may be apprehended. The police officer must then, as soon as practicable, bring the person before a court, and produce to the court the warrant or copy of the warrant in his or her possession.

202. The warrant or a copy must be produced to the magistrate. If one is not available the court must either order that the person be released or adjourn the proceeding for a reasonable time and remand the person on bail or in custody. One further adjournment may be granted if reasonable cause is shown. The total time of the adjournments must not exceed 5 days. If the warrant or a copy is still not produced

the person must be released. The proceeding can be resumed before the end of a period of adjournment if the warrant or a copy becomes available.

203. A person released may be re-apprehended if the warrant or a copy is produced when the person is re-apprehended.

Clause 114: Law applicable to grant of bail etc.

204. This clause provides that the law of a State with respect to bail and related matters applies in relation to a person who is remanded on bail under an order made in that State.

205. Money received in proceedings for enforcement of bail is to be retained by the State where the bail condition which was breached was imposed.

Clause 115: Proceedings before court

206. This clause provides that the court before which the person is brought, if it is satisfied about his or her identity and not satisfied that the liability to pay the fine has been discharged, must order that the person be committed to prison. Otherwise, he or she is to be discharged, subject to the requirements of State law relating to bail.

207. The period of imprisonment must be the period specified in the warrant of apprehension or 6 months, whichever is the shorter. The clause sets out a formula for reducing the period of imprisonment where part of the fine has been paid or remitted after the issue of the warrant of apprehension, and before the making of the order of committal.

208. The court may suspend execution of the order committing the person to prison, to allow him or her time to pay the unpaid amount of the fine, to pay that amount by instalments or for other reasons. It may also exercise powers that it has in the case of a person charged with an offence against State law. It may not make an order for costs.

Clause 116: Review of orders of committal

209. This clause enables a person aggrieved by an order or exercise of power under clause 115 to apply to a judge of the Supreme Court of the State in which the person was apprehended for a review of the order. The review is to be by way of rehearing. Additional evidence may be received. The judge may confirm, vary or quash the order. An order may be made relating to costs of the review.

Clause 117: Issue of warrant of commitment

210. This clause provides that where a State court acting under Part 7 orders that a person be committed to prison, the clerk of that court, or a justice of the peace of the State, may issue a warrant for the commitment ('a warrant of commitment') of that person to a prison in that State.

Clause 118: Payment of fine etc. before issue of warrant of commitment

211. This clause deems an order committing a person to prison under Part 7 to be discharged if a pardon is granted, or the whole of the unpaid amount of the fine is paid or remitted, before a warrant of commitment is issued pursuant to the order. If part only of that amount is paid or remitted, the order operates as if it had directed imprisonment for the same period that would have been ordered if the payment had been made, or the remission granted, before the making of the order.

Clause 119: Payment of fine after issue of warrant of apprehension

212. This clause sets out machinery provisions relating to payment of the fine, wholly or in part, or other discharge of the unpaid amount of the fine, at various stages in the process following issue of a warrant of apprehension. It sets out who may receive a payment in respect of a fine, the obligations of persons involved in transmitting payments received, matters to be notified to clerks of courts, and action to be taken in relation to execution of warrants in the various circumstances set out in the clause.

213. The clause also provides that a police officer executing a warrant of apprehension or a warrant of commitment is not to accept a payment of part only of the unpaid amount of the fine.

Clause 120: Person liable to pay 2 or more fines etc.

214. This clause provides that where a person is committed to prison under more than one warrant, which include one or more warrants under Part 7, the imprisonment satisfies all the warrants under Part 7 concurrently until the last of those warrants has been fully executed, whether or not the imprisonment also (concurrently) counts as imprisonment under any other warrant.

Clause 121: Release of person from prison on payment of fine etc.

215. This clause provides for the release from prison of a person imprisoned under a warrant of commitment if -

- . the whole of the unpaid amount of the fine specified in the warrant is paid or remitted; or
- . a pardon is granted in respect of the relevant offence;

unless the person is in custody for another reason.

216. It also provides for proportionate reduction of the period of imprisonment where part of the unpaid amount of the fine is paid or remitted.

Clause 122: Effect of imprisonment

217. This clause provides that a person imprisoned under Part 7 because of failure to pay an amount in respect of a fine is, upon termination of that imprisonment, discharged from any liability to pay that amount or any part of that amount remaining unpaid, or to be imprisoned because of non-payment of that amount or part of that amount.

Clause 123: Juveniles not to be imprisoned

218. This clause provides that -

- . a clerk or a justice of the peace must not issue a warrant of apprehension under Part 7 in respect of a person whom he or she has reason to believe may be under 18 years of age;
- . a police officer must not apprehend a person, under a warrant of apprehension, whom he or she has reason to believe may be under 18 years of age; and
- . a court must not make an order under Part 7 committing to prison a person whom it is satisfied is under 18 years of age.

Clause 124: Conditions of imprisonment

219. This clause applies, as far as they are applicable, the laws of a State with respect to -

- . the conditions of imprisonment of persons imprisoned because of default in the payment of fines under State law;
- . the treatment of such persons during imprisonment; and
- . the transfer of such persons from prison to prison;

to persons imprisoned in that State under Part 7.

Clause 125: Application of the Removal of Prisoners (Territories) Act

220. This clause applies the Removal of Prisoners (Territories) Act 1923 (with any prescribed modifications and

adaptations) in relation to a person ordered to be imprisoned under Part 7 by a Territory court in the same way as that Act applies in relation to a person sentenced to imprisonment in that Territory.

221. The Removal of Prisoners (Australian Capital Territory) Act 1968 provides for the removal of prisoners from the Australian Capital Territory to New South Wales. It applies to a person who, under a law in force in the Australian Capital Territory, is liable to undergo imprisonment or other detention in custody.

Clause 126: Saving

222. This clause provides that nothing in Part 7 affects the operation of other Parts of the Act.

PART 8 - MISCELLANEOUS

Clause 127: Matters of state

223. This clause applies where, in relation to a tribunal performing an investigative function, application is made for leave to serve a subpoena interstate, for an order for production of a prisoner or for an order authorising the apprehension of a person, where the evidence, document or thing sought by the subpoena or order may contain evidence relating to matters of state.

224. Before the court can give the leave or make the order sought, the applicant must have given at least 14 days notice of the proceedings, and the issue of the subpoena, to the Attorneys-General for the Commonwealth, the State in which the tribunal is established and the State in which the person concerned is located. The Commonwealth and any State whose Attorney-General was notified are entitled to intervene in the proceedings. The court may direct that such proceedings be held in camera.

Clause 128: Claim of public interest immunity not precluded

225. This clause provides that neither the fact that leave has been granted or an order made as referred to in clause 127 nor the disclosure of any matter in the proceedings for the leave or order affects any claim in proceedings before the tribunal that certain evidence is subject to public interest immunity.

Clause 129: Custodians to assist prisoners served with subpoenas

226. This clause provides that a custodian of a prisoner in one State who is served with a subpoena issued in another State must provide the prisoner with such assistance as the prisoner reasonably requires to -

- . comply with the subpoena (where the subpoena only requires the production of documents or things);
- . apply for relief with respect to the subpoena or an order for production; and
- . obtain legal advice in connection with the subpoena or order.

Clause 130: Jurisdiction not limited by locality

227. This clause provides that limitations under State law about the locality in which process may be served do not affect the jurisdiction that a court or tribunal acquires because the process is served under the Act.

Clause 131: Constitution of courts

228. This clause provides that the jurisdiction of a Supreme Court in matters arising under certain provisions of the Act is to be exercised by the Supreme Court constituted by a single judge.

Clause 132: Regulations etc:

229. This clause enables the Governor-General to make regulations and courts to make rules to carry out or give effect to the Act. The rules must not be inconsistent with the regulations.



